IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

IN RE:	:	
	:	
	:	Case No. 03-0574
JACQUELINE M. KING,	:	
Debtor.	:	Chapter 13
	:	
	:	
	:	

ORDER

Upon full consideration of Debtor's Motion for Emergency Hearing and/or a Ruling on the Motion to Reinstate the Automatic Stay, any opposition thereto, the record herein and good cause having been shown on this 19th day of June, 2003,

ORDERED that the Debtor's Motion is DENIED.

/s/
S. Martin Teel

Copies to:

Jacqueline M. King
PO Box 91608
Washington, DC 20090-1608

Cynthia Niklas, Esquire
Chapter 13 Trustee
4545 42nd Street NW, Suite 211
Washington, DC 20016

Jeremy S. Friedberg, Esquire
Counsel for States Resources Corporation
Leitess, Leitess & Friedberg, PC
25 Hooks Lane, Suite 302
Baltimore, Maryland 21208-1302

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

IN RE:	:	
	:	
	:	Case No. 03-0574
JACQUELINE M. KING,	:	
Debtor.	:	Chapter 13

ORDER OF DISMISSAL WITH PREJUDICE

Upon consideration of the Trustee's motion to dismiss with prejudice and the court record herein, it is, therefore, this 8th day of August, 2003,

ORDERED, that the Trustee's motion to dismiss with prejudice, be and the same, is hereby granted and it is further,

ORDERED, that the above-captioned matter be and the same is hereby dismissed with prejudice to the refiling of any case under the Bankruptcy Code for a period of 180 days after entry of an Order of Dismissal, pursuant to 11 U.S.C. §§109(g) & 1307 (c).

/s/
S. Martin Teel, Jr.
United States Bankruptcy Judge

cc:

Jacqueline King
4011 13th Street, NE
Washington, DC 20017

Cynthia A. Niklas,
4545 42nd Street NW #211
Washington, DC 20016-4623

Jacqueline King
PO Box 91608
Washington, DC 20090-1608

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

IN RE:	:
	: Case No. 03-0574
JACQUELINE M. KING,	:
Debtor.	: Chapter 13
	:
	:

ORDER DENYING DEBTOR'S MOTION FOR RECONSIDERATION OF OF DISMISSAL

Upon consideration of the debtor's Motion for reconsideration of this Court's Order of August 13, 2003, dismissing said case with prejudice, and the Objection of the Trustee, together with the Court Record herein and pursuant to a decision of this date, it is this 5th day of November, 2003,

ORDERED, that the debtor's Motion for reconsideration of this Court's Order dismissing case with prejudice filed and entered on August 13, 2003 is hereby denied.

/s/
S. Martin Teel, Jr.
U.S. Bankruptcy Judge

Jacqueline M. King
PO Box 91608
Washington, DC 20090-1608

Karl W. Carter, Jr.
2300 M Street, NW
Washington, DC 20037

Walter Childs
Third Successor Personal Representative
of the Estate of Garland A. King, Sr.
c/o Calvin Steinmetz, Esq.
2141 P Street, NW, #103
Washington, DC 20037

Western Surety
Attn: Mary Fortin
P.O. Box 5077
101 S. Phillips Avenue
Sioux Falls, SD 57117-5071

Yvonne Wright-King
3974 El Camino Place
Alexandria, VA 22309

Department of the Treasury
Internal Revenue Service
Attn: Ronn Mars (Badge No. 52-07302)
Small Business-Self-Employed Division
Washington, DC 20224

States Resources
c/o Jeremy S. Friedberg
Leitess, Leitess & Friedberg
25 Hooks Lane, #302
Baltimore, MD 21208-1302

Cynthis A. Niklas
Chapter 13 Trustee
4545 42nd Street NW #211
Washington, DC 20016-4623

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

Filed November 7, 2003

IN RE:	:	
	:	
	:	Case No. 03-0574
JACQUELINE M. KING,	:	
Debtor.	:	Chapter 13
	:	
	:	

DECISION RE MOTION FOR RECONSIDERATION OF ORDER DISMISSING CASE

The debtor King seeks reconsideration of this court's order dismissing this case with prejudice. The case was filed in bad faith, and king has failed with adequate diligence to comply with her procedural obligations in this case. Accordingly, dismissal was appropriate as a sanction for bad faith and as a sanction for an egregious set of failures to comply with procedural obligations. The dismissal ought to be with prejudice for two reasons: first, the case was filed in bad faith; and, second, any voluntary dismissal by the debtor would automatically have been with prejudice

under § 109(g) (2), such that any dismissal by the court ought to be with prejudice as well lest the debtor achieve a result she herself could not achieve by voluntarily dismissing.

1. Bad Faith. The mailing matrix King filed in this case included only one creditor, State Resources Corp., and the petition was filed on the day a foreclosure sale had been scheduled by State Resources Corp., and in order to stay that sale pursuant to 11 U.S.C. § 362 (a).

King was not personally obligated to State Resources Corp. However, on the very day that King filed her bankruptcy petition, and just prior to her filing that petition, Luther Perkins conveyed to her an interest in property that was encumbered by a deed of trust securing a debt owed by Perkins to State Resources Corp. The petition was filed to stop State Resources' foreclosure sale of the property (scheduled to occur on the same day as the date of the filing of the petition) a time that Perkins himself was barred from filing a bankruptcy case. Perkins had filed four prior

bankruptcy cases[9] that had stayed enforcement of the deed of trust. The last of those cases had been dismissed with prejudice for 180 days by an order entered on January 29, 2003, so Perkins was barred from e-filing to obtain a stay of State Resource's foreclosure sale set for March 25, 2003. The conveyance to King and her bankruptcy filing on March 25, 2003, were plainly in bad faith as they were an abusive attempt to frustrate the legitimate efforts of a mortgagee to foreclose against a sole owner who had exhausted his opportunities, after several attempts, to utilize the Bankruptcy Code to address his mortgage defaults. See In re Allen, ____ B.R. ____, 2003 WL 22382940 (Bankr.D.D.C. Sept. 5,2003) , and particularly parts v and vi of that decision.

2. Failure to Include Other Creditors on the Mailing Matrix. The debtor failed to include any other creditors besides State Resources on the mailing matrix she filed with her petition. That failure was a blatant disregard of her obligations in this case. The

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9 The cases, filed in this court, were Case No. 02-2325; Case No. 01-01468; Case No. 01-01468; Case No. 00-01534; and Case No. 97-02467.

consequence was that when the clerk mailed notice of the commencement of the case, State Resources was the only non-governmental creditor mailed that notice. Once the debtor finally scheduled creditors omitted from the mailing matrix, the debtor neglected to file a certificate of mailing to those creditors a copy of the notice of the commencement of the case as required by LBR 1009-1 (c).

3. Failure to List Accurate Address for Creditor. The debtor failed to list a creditor's proper address when she finally amended the mailing matrix to include that creditor.

4. False Street Address for the Debtor. On the petition under "STREET ADDRESS OF DEBTOR (No. and street, city, state, zip)" the debtor listed as her street address 4011 13th Street as her mailing address she should have listed her actual street address and listed 4011 13th Street as her mailing address.[10] Moreover, the use of a false street address

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10 For purposes of receiving mail, a debtor is permitted on the petition to specify an address (different than her listed street address) under the space on the petition for "MAILING ADDRESS OF DEBTOR

for receipt of mail, with mailing to that address resulting in the mail then being be forwarded to a Post Office Box was sure to engender delay in the receipt of mail, whereas using just the Post Office Box as her mailing address would not have. The debtor has only herself to blame for non-receipt or delayed receipt arising from using a false street address as her mailing address.

The use of a false street address as the debtor's mailing address engendered delay in this case that was prejudicial to the administration of justice. It first resulted in the debtor not appearing at a hearing on State Resources' motion for relief from the automatic stay, and the necessity of the court's addressing the debtor's motion to reconsider. It next resulted in the debtor not receiving notice of the meeting of creditors at which she was required to appear and testify, and in her failing to appear at that meeting. (See DE Nos. 18 and 20.). It further resulted in her not receiving the court's order directing the debtor to file her schedules (the returned envelope containing that order being in

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(if different from street address)."

the court's file).

5. Failure to Schedule Creditor. The debtor failed to schedule her parking fines and moving violations fines owed to the District of Columbia until June 18, 2003, almost three months after the commencement of the case.

6. Erroneous Social Security Number on Petition. The debtor did not even list her correct Social Security Number on the petition (see DE No. 20), thus resulting in creditors being given an incorrect Social Security Number (See DE No. 11), and she has never filed an amended petition to correct the Social Security Number, with the result that even the notice of dismissal of the case (DE No. 65) recited an erroneous Social Security Number.

7. Failure to Commence Plan Payments Timely. The debtor failed to commence plan payments timely.

8. Bases for Dismissal. The debtor's bad faith with respect to State Resources justifies dismissing this case.

Furthermore, the debtor's numerous procedural blunders warrant dismissing this case: ~~if a debtor wants~~

to pursue a bankruptcy case after making numerous procedural blunders showing a lack of reasonable care in complying with her procedural obligations, the court is entitled to require her to commence the case anew in a procedurally correct fashion so that it begins in a clean fashion without all of the procedural missteps that have been prejudicial to creditors and to sound judicial administration.

9. Making the Dismissal With Prejudice. Dismissal with prejudice is justified, first, because of the debtor's obvious bad faith. Moreover, because a motion for relief from the automatic stay has been filed, any dismissal by the debtor would be with prejudice under 11 U.S.C. & 109 (g) (2). When the court dismisses a case for procedural irregularities, the debtor ought not be allowed thereby to achieve a dismissal without prejudice that, by reason of § 109 (g) (2), she could not achieve had she voluntarily dismissed the case.

Dated: November 5, 2003.

/s/
S. Martin Teel, Jr.
United States Bankruptcy Judge

Copies to:
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In Re JACQUELINE M. KING,	:	
	:	
v.	:	Civil Action No.
	:	04-0119 (JR)
STATE RESOURCES CORP.,	:	
TRUSTEE-CYNTHIA A. NIKLAS	:	

MEMORANDUM OPINION

Jacqueline M. King appeals from a decision of the United States Bankruptcy Court of the District of Columbia (Bankruptcy Petition No. 03-00574) dismissing her Chapter 13 petition with prejudice pursuant to 11 U.S.C § 1109(g). My review of the Bankruptcy Court's factual findings applies a "clearly erroneous" standard, and I am to review its legal conclusions *de novo.* Bankruptcy Rule 8013; In re Sharon Steel Corp., 871 F.2d 1217 (3d Cir. 1989).

In an opinion accompanying its decision declining reconsideration of an order dismissing Ms. King's Chapter 13 petition with prejudice, the Bankruptcy Court found that the petition had been filed in bad faith. The Court explained this finding with ample

subsidiary findings of fact: that the mailing matrix Ms. King filed included only one creditor, States Resources Corp., and that she filed her petition on the day a foreclosure sale had been scheduled by State Resources Corp.; that Ms. King was not personally obligated to State Resources Corp., but that, on the same day her petition was filed, and minutes before it was filed, one Luther Perkins purported to convey to her an interest in property that was encumbered by a deed of trust securing a debt that Perkins owed to State Resources Corp.; that Perkins himself was barred from filing a bankruptcy petition because he had filed four prior bankruptcy cases staying enforcement of the very same deed of trust, the last of which had been dismissed with prejudice for 180 days on January 29, 2003, so that Perkins himself could not re-file to obtain a stay of the foreclosure sale. If those facts were not enough to establish the bad faith of Ms. King's Chapter 13 petition, the Bankruptcy Court further found, among other things, that her listing only of State Resources on the mailing matrix was in blatant disregard of her obligations; that when she finally did schedule other creditors she neglected to file a certificate of mailing to

those creditors; that when she finally amended her mailing matrix she failed to list a proper address for a creditor; that she listed a false address for herself (an address where she did not live when she filed the petition but from which she had been displaced several years earlier); and that she did not even list her correct Social Security number on her petition. The Bankruptcy Judge's finding that Ms. King filed her bankruptcy petition in bad faith was amply supported and is sustained.

The debtor asserts a legal point in her brief that is not squarely covered by the Bankruptcy Court's decision. She argues that the automatic stay is immediately effective upon the filing of a petition whether or not a creditor is informed of it, so that any creditors' actions taken after a petition is filed is void, and that the Court should have "require[d] SRC minimally to reset the foreclosure sale under the applicable D.C. Code when it lifted the automatic stay." At an emergency motion hearing before the Bankruptcy Court on June 19, 2003, a hearing devoted strictly to the lifting of the stay (rather than the dismissal of the bankruptcy petition) the Bankruptcy

Court declined to hear testimony from the trustee designated to dispose of the property to the effect that he was not in fact notified by the debtor on the morning of the sale, because he did not think it necessary to his ruling.

> "Not until the morning of the foreclosure sale did the debtor file her bankruptcy case. She had a friend who called to relate that the bankruptcy had been filed. This call occurred ten minutes before the foreclosure sale. If the testimony is believed that the call was made, all that was said was that a bankruptcy case had been filed, the case number, and the type of petition and that, quote, Ms. King was an owner of the property,
> unquote, but there is no evidence the copy of the deed of conveyance was given. This is simply a call out of the blue, seven minutes before the foreclosure sale was to be held, with no way of knowing that in fact there had been a conveyance of an interest in the property."

The Bankruptcy Court's ruling, vacating the automatic stay upon a finding of bad faith, had the operative effect of annulling the stay for cause, 11 U.S.C. § 362(d)(1). There was ample authority for annulment. See, e.g., In re Hoffinger Industries, Inc., 329 F.3d 948 (8th Cir. 2003); In re Webb, 294 B.R. 850

(E.D. Ark. 2003); In re Bates, 270 F.R. 455 (N.D. Ill. 2001); In re Sanders, 198 B.R. 326 (S.D. Cal. 1996); Khozai v. Resolution Trust Corp., 177 B.R. 524 (E.D. Va. 1995).

I find no error either in the factual findings or the conclusions of law of the Bankruptcy Court, and they are accordingly **affirmed.**

JAMES ROBERTSON
United States District Judge

Dated March 15, 2005

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-7058September Term, 2006
04CV0119
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT
FILED APR 4 2007
JACQUELINE M. KING, CLERK
APPELLANT,

v.

STATES RESOURCES CORP. AND
CYNTHIA A. NIKLAS,
APPELLEES.

On Appeal from the United States District Court
for the District of Columbia
(No. 04cv00119)

Before: HENDERSON, RANDOLPH and
GARLAND, *Circuit Judges.*

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. *See* Fed. R. App. P. 34 (a)(2); D.C. Cir. R. 34(j). For the reasons set forth in the attached memorandum, it is

ORDERED and ADJUDGED that the district court's affirmance of the dismissal of the bankruptcy petition be affirmed.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P.41(b); D.C. Cir. R. 41.

FOR THE COURT:
Mark J. Langer, Clerk
By: /s/Mark J. Langer,
Deputy Clerk

No. 05-7058 - King v. State Resources Corp.

MEMORANDUM

Luther Perkins was the owner of property encumbered by a deed of trust securing a debt owned by Perkins to State Resources Corp. A foreclosure sale of the property was scheduled for March 25, 2003, at 11:30 am. Perkins had filed four previous bankruptcy cases that had stayed enforcement of the deed of trust. The last of those had been dismissed with prejudice for 180 days by an order entered on January 29, 2003, thus barring Perkins from refiling in order to stay the foreclosure sale. Instead, on the morning of the scheduled sale, Perkins conveyed an interest in the property to the appellant, Jacqueline M. King. Immediately upon receiving the property, and shortly before the foreclosure sale, King filed a bankruptcy petition, which triggered the Bankruptcy Code's automatic stay provision. See 11 U.S. C. § 362(a). The only notice the trustee received of the conveyance or the bankruptcy filing was a phone call from King's friend less than ten minutes before the sale was to take place. The sale proceeded as planned.

On April 8, 2003, on motion from States

Resources, the bankruptcy court retroactively annulled

the automatic stay, see id § 362(d), thus authorizing conveyance of the property to the foreclosure purchaser. On August 8, 2003, at the bankruptcy court dismissed King's bankruptcy petition with prejudice. See *id* § 1307(c). In denying a motion to reconsider the annulment of the automatic stay, the bankruptcy court later explained that it annulled the stay because King's filing was abusive. See Hr'g Tr. at 27-29 (6/19/03. In a separate order denying a motion to reconsider the dismissal of the bankruptcy petition, the bankruptcy court found that the "conveyance to King and her bankruptcy filing . . . were plainly in bad faith as they were an abusive attempt to frustrate the legitimate efforts of a mortgagee to foreclose against a sole owner who had exhausted his opportunities, after several attempts, to utilize the Bankruptcy court to address his mortgage defaults" *In re King,* No. 03-1574, slip op. At 2 (Bankr. D.D.C. Nov 7, 2003). The bankruptcy court dismissed the petition on that basis. *Id.* at 5. The district court affirmed both rulings of the

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bankruptcy court.

King appeals the decision to retroactively annul the automatic stay. Between the time the stay was *No. 05-7058 - King v. State Resources Corp.*

annulled and this appeal, the property was sold to a good-faith purchaser. King failed to obtain a stay of the bankruptcy court's ruling pending appeal. In bankruptcy, "in the absence of a stay, the sale of estate property to a good faith purchaser cannot be overturned on appeal. Thus, this court would be unable to fashion any remedy to address [King's] asserted injury even if it were to find that the district court's denial of the motion for a stay pending appeal was improper." *Allen v. Wells Fargo Bank,* No.03-7152, 2004 WL 2538492, at *1(D.C. Cir. Nov. 9, 2004) (citations omitted). Accordingly, "the appeal must be dismissed as moot." *Id.*

King also appeals the bankruptcy court's dismissal of her petition. "We review the bankruptcy court's legal conclusion *de novo,* reversing its findings of fact only if they are clearly erroneous." *McGuirl v. White,* 86 F.3d 1232, 1234 (D.C. 1996) (citation

omitted). As the Supreme Court recently reaffirmed, 11 U.S.C. § 1307(c) authorizes bankruptcy courts to dismiss Chapter 13 petitions that are filed in bad faith. *See Marrama v. Citizens Bank*, 127 S.Ct. 1105, 1107 & n.1 (2007); see also In re Alt, 305 F. 3d. 413, 418-19

(6th Cir. 2002); In re Leavitt, 171 F. 3d 1219, 1224 (9th Cir. 1999); In re Love, 957 F. 2d 1350, 1354 (7th Cir. 1992). The bankruptcy court's "inquiry is one of fact rather than legal analysis," and we therefore "review the bankruptcy court's finding of bad faith for clear error." *In re Alt,* 305 F.3d at 420; see *In re Leavitt,* 171 F. 3d at 1222-23; *In re Love,* 957 F.2d at 134. Finding no error at all, we affirm the dismissal of King's bankruptcy petition.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-7058 September Term, 2006
04CV0119

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT
FILED JUN 20 2007

JACQUELINE M. KING, CLERK
APPELLANT,

v.

STATES RESOURCES CORP. AND
CYNTHIA A. NIKLAS,
APPELLEES.

Before: HENDERSON, RANDOLPH and
GARLAND, *Circuit Judges.*

ORDER

On consideration of Appellants petition for rehearing filed May 21, 2007, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
By: /s/Mark J. Langer,
Deputy Clerk